THE HON'BLE MR JUSTICE C. Y. SOMAYAJULU

WRIT PETITION NO : 27346 of 1998

10-11-2005

Between:

V.Panduranga Rao s/o Late Sri V.Rama Rao

..... PETITIONER

AND

1. The Municipal Corporation of Hyderabad, Secunderabad division.

.....RESPONDENT

THE HON'BLE MR JUSTICE C. Y. SOMAYAJULU

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O R D E R:

The case of the petitioner is that he having purchased a plot admeasuring 200 square yards under a registered sale deed dated

14-11-1979 from its original owner had constructed ground floor in the year 1983 and 1st floor in the year 1995 after obtaining permission from the Municipal Corporation of Hyderabad (1st respondent) as per the plans, approved and that there is a 7 feet width lane adjacent to his house for his ingress and aggress and when some slum dwellers tried to enter into that 7 feet lane, he filed O.S.No.325 of 1997 in the Court of the I Assistant Judge, City Civil Court, Secunderabad, for a perpetual injunction restraining them from encroaching into that lane, which was decreed on 28-11-1997, and that those slum dwellers managed to influence the political leaders, who are trying to influence the 1st respondent to demolish the compound wall and the gate therein and so a direction may be given to the 1st respondent not to interfere with his compound wall or building.

The contention of the learned Standing Counsel for the 1st respondent is that petitioner filed this writ petition merely under a apprehension and that 1st respondent will not demolish any structures without following the provisions of the Hyderabad Municipal Corporations Act 1955 (for short 'the Act') and that the assumption of the petitioner that the 1st respondent is trying to act on the instructions of the political leaders is not correct.

The contention of the learned Government Pleader appearing for the 2nd respondent is that petitioner having encroached into the GVM lane had constructed stairs to his house thereby interfering with the right of passage of the slum dwellers in that lane, causing inconvenience to them, and since obtaining permission for construction of the building from the 1st respondent does not confer any right on the petitioner and since the stair case of the building of the petitioner reduces the width of the lane from 7ft to 2 ft, petitioner is not entitled to any relief.

The contention of the learned counsel for the respondents 4 to 6, who came on record by filing a petition to implead them as parties, is that petitioner having occupied the grave yard poramboke to an extent of 80sq.yards, which is being used by the entire locality as passage, reduced the width of the lane to 2 feet, and since the report of the Mandal Revenue Officer, Secunderabad Mandal sent to the Collector shows that the petitioner is an encroacher,

petitioner is not entitled to any relief.

On my direction the learned Standing Counsel for the 1st respondent produced the approved plan, relating to the construction of the 1st floor of his building, which shows the existence of a 6 feet width approach lane on the North-East corner of that building. It also shows that the eastern wall of the house of the petitioner extends beyond the southern compound wall, into 10 ft width road shown as encroached by that dwellers. In that plan existing structures are shown in black colour and the proposed structures are shown in red colour. The endorsement on the reverse of the said plan, containing the signature of the Commissioner of the 1st respondent dated 10-11-1994, reads: "permission is accorded for 1st floor as per corrected plan subjected to the condition that the party shall restore his site on the southern side by his own efforts by removing encroachments himself for maintaining 6'6" on side open steps".

The fact that the petitioner obtained decree against respondents 5 and 6 and others is admitted by respondents 4 and 5 in their affidavits filed in support of the petition to implead themselves as parties. A copy of the decree in O.S.No.325 of 1997 filed along with the writ petition shows that the defendants therein are restrained, by way of a perpetual injunction, from encroaching and trespassing into the petitioner's premises shown as the suit property.

Since the plan submitted by the petitioner for construction of 1st floor itself shows existence the eastern compound wall beyond the southern compound wall of the petitioner, and since that permission was accorded to the petitioner in 1994 subject to his own efforts to remove encroachments on the southern side, and since petitioner is not claiming any relief against respondents 2 to 6 in this petition, and since the contention of respondents 2 to 6 about the encroachment allegedly made by the petitioner need not be gone into in this petition, and since respondents 2 to 6 if they feel aggrieved by the alleged encroachment made by the petitioner have to take steps for removal of the encroachment, this petition can be disposed of by giving a direction to the 1st respondent not to demolish the building of the petitioner without following the process prescribed under the Act.

Hence the writ petition is disposed of with a direction to the 1st respondent-corporation not to demolish any portion of the building of the petitioner without following due process prescribed by the Hyderabad Municipal Corporations Act, 1955. No costs.

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10-11-2005

Mjl/*